IN THE HIGH COURT OF JUDICATURE, AT BILASPUR.

SECOND APPEAL NO. 332 /2005 **SINGLE BENCH**

Appellants Plaintiffs

1. Smt. Shanti Bai Mishra, aged about 65 years Wd/o late Vishnu Prasad Mishra
2. Sanat Mishra, aged about 43 years.
3. Suraj Mishra, aged about 37 years
4. Santosh Mishra, aged about 35 years.

Appellants No. 2 to 4 S/o Vishnu Prasad Mishra, R/o Brahmanpara Raipur, Distt. Raipur (C.G.)

5. Smt. Sudha Sharma, aged about 46 years, W/o Late Vrinda Prasad Sharma, R/o Rohinipuram, Raipur (C.G.)
6. Smt. Usha Sharma, aged about 39 years, W/o Shri S. K. Sharma R/o Vidyanagar Bilaspur, Tah. & Distt. Bilaspur (C.G.) (Wrongly written as Raipur)
7. Smt. Sandhya Sharma aged about 32 years, W/o Prakash Chandra Sharma, R/o Station Road, Near 310 A. K.Shukla Mahasamunda, Distt. Mahasamunda (C.G.)

VERSUS

Respondents/ Defendants

:1 Competent Authority under M.P. Land Ceiling Act, 1960/ Additional Commissioner, Raipur Division, Raipur (C.G.)

2. Smt. Shanta Bai aged 78 years W/o Manishankardhar Sharma Through M.S.D. Sharma (Advocate) Masanganj Bilaspur
3. State of Chhattisgarh, Through Collector, Raipur (C.G.)

APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE

(22)

HIGH COURT OF CHHATTISGARH AT BILSAPUR

Second Appeal No. 332/2005

APPELLANTS : Smt. Shanti Bai Mishra and others

VERSUS

RESPONDENTS : Competent Authority under M.P. Land Ceiling Act and others.

Shri B.P. Gupta learned counsel for the appellants.
Shri J.D. Bajpai learned GA for the respondent No.3/State.

J U D G M E N T

(Delivered on 05.1.2006)

Dhirendra Mishra, J

The appellants have preferred this Second Appeal against the impugned judgment and decree dated 11.4.2005 passed by XIII Additional District Judge (FTC) Raipur in Civil Appeal No. 17-A/2004 by which the appeal preferred by the appellants/plaintiffs against the judgment and decree dated 31.7.2003 passed by XI Civil Judge Class II Raipur in Civil Suit No. 153-A/2002 has been dismissed.

2. Brief facts necessary for disposal of this appeal are that defendant / respondent No.1 – the Competent Authority registered a Ceiling Case under Ceiling on Agricultural Holdings Act, 1960 (hereinafter referred to as Act) against one Vishnu Prasad and by order dated 21.9.1978 passed in Ceiling Case No. 130-133-161-B/90 (3) year 1974-75 and declared 72.78 acres of land as surplus land and vested the same in the State Government out of the land belonging to said Vishnu Prasad. Said Vishnu

Prasad thereafter filed a suit for declaration and permanent prohibitory injunction with a prayer that the plaintiff be declared the owner of ¾ share and the defendant No.2 be declared the owner of ¼ share of the land described in schedule – A. Relief for perpetual injunction restraining respondent/defendant No.1- the Competent Authority from dispossessing the plaintiff from the surplus land of 72.78 acres described in Schedule –B appended with the plaint, was also sought.

3. Defendant No. 1 in his written statements denied the averments made in the plaint and submitted that the plaintiff did not file reports as per the provisions of the Act. The land described in schedule B stands vested in the State Government and thus he is not the owner of the suit property. This apart the defendant No.1 has stated in his written statement that the suit was barred under the provisions of section 46 of the Act.

4. Defendant No.3 in its written statement has stated that there was 279.24 acres of land in the name of the plaintiff and in the family partition 49.46 acres of land was allotted to the share of the mother of the plaintiff namely Godavari Bai who died in the year 1964 and after her death the above land stood reverted to the plaintiff who sold it to one Sushil Chandra. Thus as per the Act of 1960 the plaintiff was holding surplus land and it has been rightly vested in the State Government and that the suit was barred by limitation. Since the plaintiff is in possession of the land which is vested in the State Government he is liable to pay damages. Even otherwise the suit is barred under the Act of 1960.

5. On the basis of the pleadings of the respective parties the issues were framed by the trial Court and the suit was dismissed by recording a finding that it had no jurisdiction to entertain the suit and as such it was not maintainable. The trial Court has further recorded a finding that the plaintiff is not entitled for declaration that he is the owner of ¾ share and the defendant No.2 is the owner of ¼ share of the property described in schedule-A and accordingly the plaintiff is not entitled for perpetual injunction against defendant No.1 from being dispossessed from the surplus land or from recovering the compensation.

6. The plaintiff preferred civil appeal against the judgment and decree of the trial Court which has also been dismissed by the impugned judgment and decree by recording a finding that though the suit is maintainable yet since the plaintiff has not challenged the order of the Competent Authority vesting the land of the plaintiff in the State Government, no declaratory decree with respect to the surplus land declared by defendant No.1 by its order dated 27.8.1977, can be passed and without praying for setting aside the order of vesting of the land no prohibitory injunction against dispossession from the disputed land can be passed.

7. Learned counsel for the appellants has challenged the impugned judgment and decree solely on the ground that once the learned lower Appellate Court arrives at the conclusion that the civil suit was maintainable and is not barred under section 46 of the Act of 1960, the plaintiff was entitled for the decree of declaration and perpetual injunction as prayed and the suit could not be dismissed on the ground that the plaintiff has not sought for declaration to set aside the order of vesting of surplus land in the State Government passed by defendant No.1 as it was not the case of either party. He further submits that the respondent No.2 being the legal heir of Smt. Godavari Bai had a right to succeed her estate and she could not be denied the same simply because she remained ex parte in the case.

8. I have heard learned counsel for the appellants and perused the records of the Courts below.

9. From perusal of the order dated 21.9.1978 passed by defendant No.1 it appears that initially vide order dated 23.7.1976 72.78 acres of land was declared surplus and it was vested in the State Government, the plaintiff as also the transferees of certain land preferred an appeal against the above order and the Board of Revenue remanded the case with a direction to dispose of the ceiling case after issuing notice under section 4

of the Act of 1960 to the transferees. The competent authority after complying with the directions of remand again vested the above land by order dated 27.8.1977. The plaintiff and four other transferees preferred four separate appeals against the above order and the Board of Revenue vide order dated 10.1.1978 dismissed the appeal preferred by three transferees. However, appeal preferred by one Bhuvanlal Mishra was allowed and the case was remanded back with a direction to afford an opportunity of hearing before passing any order and by order dated 21.9.1978 again it declared 72.78 acres of land as surplus and vested the same in the State Government. From perusal of this order it is evident that there was no dispute of title before the competent authority with respect to the land in question. The plaintiff by the instant suit has not prayed for setting aside the order dated 21.9.1978 by which his land has been declared as surplus and vested in the State Government under the provisions of the Act of 1960. The Competent Authority after hearing the parties published a draft statement and the plaintiff or any interested person could raise the objection, if any against the publication of said draft statement against the proposed vesting within 30 days and the competent authority if after considering such objection finds that any question has arisen regarding the title of the land in question which has not been decided by the court of competent jurisdiction, he may institute a suit in the civil Court within three months from the date of such order and get the order set aside.

10. The submission of the learned counsel for the appellant that by the suit filed under section 9 of the Code of Civil Procedure the plaintiff had prayed for declaration of his title with respect to ¾ share of land and for ¼ share for defendant No.2 in the property described in schedule – A appended to the plaint and as there was no prayer there in to set aside the order of the Competent Authority, the question of limitation of three months from the date of passing of the order by the Competent Authority does not arise. It is argued that the plaintiff was only entitled for ¾ share in the property described in Schedule –A, because he has inherited the

property from his father Manilal equally along with Godavari Bai, his mother and after the death of Godavari Bai, the plaintiff as also defendant No.2, his real sister, were entitled to inherit ½ share each from the share allotted to Godavari Bai. Thus the plaintiff was entitled to ¾ share and defendant No.2 was entitled for ¼ share of the property described in schedule –A. However, the competent Authority without considering the entitlement of defendant No.2 and considering the plaintiff to be the owner of the whole property has declared surplus and in the above circumstances a declaratory decree as prayed ought to have been granted.

11. The above argument is unacceptable inasmuch as unless the order of vesting of land passed by the Competent Authority is set-aside, declaration with respect to the land which has been declared surplus and vested in the State Government cannot be passed and without declaring the order of vesting illegal no prohibitory order restraining defendant No.1 from dispossessing the plaintiff from the vested land and further recovering compensation for continuing to be in possession of the land so vested in the State Government, can be passed.

12. Thus in view of the aforesaid discussion this Court is of the view that the learned lower Appellate Court has committed no illegality in confirming the judgment and decree passed by the trial Court dismissing the suit of the plaintiff by recording a finding that it is not maintainable. No substantial question of law is involved for adjudication in this appeal and the appeal being merit-less is hereby dismissed.

Sd/-
Dhirendra Mishra
Judge